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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION DEC 13 2004  
WASHINGTON, DC 20554

Federal Communications Commission  
Office of Secretary

IN THE MATTER OF )

THRIFTY CALL, INC. )

PETITION FOR DECLARATORY RULING CONCERNING )  
BELLSOUTH TELECOMMUNICATIONS, INC )

TARIFF F.C.C. No. 1 )

TO: THE COMMISSION )

CB/CPD FILE No. 01-17

WC 05-53

**APPLICATION FOR REVIEW**

In this Application for Review, pursuant to Section 1.115 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.115, the Competitive Telecommunications Association ("CompTel")/Association of Communications Enterprises ("ASCENT") Alliance ("CompTel") urges the Commission to review the *Declaratory Ruling* issued by the Wireline Competition Bureau ("WCB") in the above-referenced proceeding and reverse or revise it as necessary to apply the proper definition of "Customer" in BellSouth's federal access tariff. Further, the Commission should act to reverse the *Declaratory Ruling's* conclusion that state public utility commissions are free to apply a different jurisdictional separations process than that mandated by the FCC by permitting retroactive PIU revisions in a manner inconsistent with the Communications Act, Commission precedent and the unambiguous language of BellSouth's interstate access tariff.

As previously submitted to the Bureau, many CompTel members purchase access services from BellSouth and other ILECs. These purchases are governed by the ILECs' federal and state access tariffs. It is crucial for CompTel members to be able to rely on the proper

implementation of these tariff terms. The manner in which the Bureau skews the definition of "Customer" in the *Declaratory Ruling* is incorrect on its face and contradicts any other interpretation applied to date. More importantly, the holding of the *Declaratory Ruling* is inconsistent with 15 years of prior FCC policy and creates impossible new burdens for interexchange carriers.

The *Declaratory Ruling* also allows state PUCs to depart from a carrier's federal tariff language governing the jurisdictional separations process by permitting states to change percentage interstate usage reports retroactively in a manner uncontested under the tariff.

CompTel is the premier industry association representing competitive telecommunications providers and their suppliers. CompTel's members provide local, long distance, international, Internet and enhanced services throughout the United States. CompTel participated by filing *Reply Comments* in this matter and believes that the *Declaratory Ruling* should be revised by the Commission so that CompTel members can rely on the proper terms of BellSouth's F.C.C. Tariff No. 1. Therefore, CompTel asks that the *Declaratory Ruling* be revised as explained below.

**I. THE COMMISSION SHOULD FIND THAT THE TERM "CUSTOMER" AS USED IN BELL SOUTH'S FEDERAL ACCESS TARIFF MEANS ONLY THE ENTITY SUBSCRIBING TO SERVICE UNDER THE TARIFF**

This Application for Review raises the issue of the proper interpretation and application of the Commission's Entry-Exit Surrogate ("EES") methodology for computing percent interstate use ("PIU") allocations. In the *Declaratory Ruling*, the WCB concluded that Thrifty Call had correctly determined that the EES methodology was applicable, but that Thrifty Call had not correctly interpreted that methodology. In reaching this conclusion, the WCB

reached a number of intermediate conclusions. Ultimately, however, the WCB adopted an interpretation of the EES methodology that is incorrect and unsustainable.

*First*, the WCB correctly observed that “the points where the call originates and terminates are more significant than the intermediate facilities used to complete such communications” and that this analysis applies regardless of the number of interexchange carriers that handle a particular call.<sup>1</sup> That conclusion is undoubtedly correct, as is the WCB’s observation that jurisdictional allocations are designed to determine to which jurisdiction – interstate or intrastate – a particular call should be allocated.<sup>2</sup>

Next, the WCB also correctly observed that the EES methodology could be applied to Feature Group D traffic; that is, its application is not limited solely to Feature Group A and Feature Group B traffic.<sup>3</sup> The WCB also correctly observed that “[w]ith many access services, such as those that provide automatic number identification (“ANI”) capability, jurisdiction is readily determined.”<sup>4</sup>

Had the WCB stopped there and forthrightly held – as it implicitly assumed<sup>5</sup> – that the jurisdiction-identifying information on the calls in question was present and, based on

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<sup>1</sup> *Declaratory Ruling*, ¶ 15.

<sup>2</sup> *Id.*, ¶ 8.

<sup>3</sup> *Declaratory Ruling*, ¶¶ 14-15.

<sup>4</sup> *Id.*, ¶ 9.

<sup>5</sup> The WCB appears to assume that the actual origination of the point was in fact *known*. For example, the WCB asserts that:

The fact that the calls at issue were routed through an intermediary switch in Georgia is immaterial to the jurisdiction of a call. *Thrifty Call should have reported* all calls where both the calling party and the called party were located in the same state as intrastate calls and should have reported all calls where the calling party was located in one state and the called party was located in another state as interstate calls.

*Declaratory Ruling*, ¶ 15 (emphasis added).

that information, Thrifty Call should have reported those calls as intrastate, then there would be no matter of proper tariff interpretation to bring to the Commission.

Unfortunately, the WCB did not do so. Instead, the WCB erred by concluding that the EES methodology applied, and then concocting an interpretation of that methodology that is squarely inconsistent with 15 years of Commission precedent and the unambiguous language of BellSouth's interstate access tariff. In this regard, it bears repeating that, under Commission precedent and the unambiguous language of the BellSouth interstate access tariff, if the actual origination point of the call were known, then the EES methodology *never comes into play*.<sup>6</sup>

In its *Declaratory Ruling*, the WCB concluded that the EES methodology applied – which necessarily assumes that the actual origination point of the call was unknown – but then concluded that:

Thrifty Call incorrectly used as the point of entry the state in which the call entered Thrifty Call's network, rather than, as intended

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Further support for this belief is found in the WCB's observation that:

It is noteworthy that Thrifty Call did not apply a consistent methodology to determine the jurisdiction of its calls. Thrifty Call admitted that in Georgia it used the originating and terminating points of the calls to determine their jurisdiction rather than treating 100 percent of the calls as intrastate due to the use of Thrifty Call's Georgia-based switch in routing the calls.

*Declaratory Ruling*, ¶ 15, n.51 (emphasis added).

The WCB's conclusion necessarily assumes that *Thrifty Call* knew the actual location of the calling party. Otherwise, Thrifty Call could not have reported its North Carolina calls in the manner the WCB suggests was proper.

CompTel/ASCENT takes no position on the facts of the Thrifty Call case except to observe that, if the WCB's implicit assumption was correct and supposed on the record – namely that the actual originating location of the calling party was known – then the EES methodology was not applicable in the first instance. If that, in fact, were the case, the WCB should have said so.

<sup>6</sup> *BellSouth Tariff F.C.C. No. 1.*

under the EES methodology, the state in which the call left the originating LEC's network and entered the IXC network.<sup>7</sup>

The WCB's interpretation is flatly wrong and the unambiguous language of the BellSouth interstate access tariff compels an entirely different conclusion. BellSouth's interstate access tariff itself first defines a "Customer" as:

Any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or other entity *which subscribes to the services offered under this tariff*, including both Interexchange Carriers (ICs) and End Users.<sup>8</sup>

This definition makes clear that the "Customer" is the entity which subscribes to the Bellsouth service, and no one else. Further, to the extent the provision is deemed unclear, it is to be read in the light most favorable to the purchaser of services.<sup>9</sup>

The tariff goes on to specify that, when the actual origination and termination of the call is unknown,

interstate usage is to be developed as though every call that *enters a customer network* at a point within the same state as that in which the called station . . . is situated is an intrastate communication and every call for which the point of entry is in a state other than that where the called station . . . is situated is an interstate communication.

The Commission has directed the ILECs to include this provision in their tariffs *as a substitute for the unknown origination point*; that substitute is the first location known to the ILEC's access customer – the point at which the call enters that customer's network. The call is then treated for

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<sup>7</sup> Declaratory Ruling, ¶ 16.

<sup>8</sup> BellSouth Tariff F.C.C. No. 1, p. 2-55 (effective Dec. 16, 1996). The tariff does not include a definition for the term "customer network" nor does BellSouth define the "point of entry."

<sup>9</sup> Commonwealth of Virginia State Corp. Commission v. MCI Tel. Corp., Memorandum Opinion and Order, 15 FCC Rcd 10,583, ¶ 20 (2000) (recognizing that "to the extent that there is an ambiguity . . . it is construed against MCI as the drafter of the Tariff.") (citing Halprin, Temple, Goodman, & Sugrue v. MCI Tel. Corp., 13 FCC Rcd 22,568 at ¶ 13 (1998)).

jurisdictional purposes as though it originated at that network entry point. This has been the plain language understanding of the EES methodology and the ILEC's implementing tariff language for 15 years.

In this case, it is undisputed that *Thrifty Call* was BellSouth's access customer. It is also undisputed that no other IXC purchased access services from BellSouth with respect to the calls at issue. Thus, the tariff cannot be rationally interpreted as meaning other than that the point of entry was the point at which the call entered *Thrifty Call's* network. The WCB's conclusion to the contrary is incorrect as a matter of law.

Moreover, if allowed to stand as written, the holding of the *Declaratory Ruling* is a major modification of the EES methodology without following proper administrative law procedures. And a very bad one at that. The EES method was created to apply when a carrier purchasing access services did not know the origination point of a call. In such cases, the carrier was instructed to use a surrogate for that origination point, namely the location where the call first entered that carrier's network. There were thus two possible origination points for a call – the actual origination point, if known, or the point at which the call entered the network of the access purchaser, if the actual point of origination is unknown. The *Declaratory Ruling* has now essentially created a third possibility, namely where the call entered the network of some other IXC before reaching the network of the carrier purchasing access. Under the WCB's logic, in those cases, the final IXC is supposed to make PIU reports based on where the call entered *another carrier's* network. This is outside the scope of the EES policy and the BellSouth tariff, and is extremely impractical.

The implications for IXCs are extreme, as under this new policy they will be required to inquire of any other IXC handling a call before they receive it as to the origination

point of the call. And as the Commission well knows, in today's telecom environment, calls often pass through multiple carriers, including Internet backbone companies, before reaching their final termination point. It is extremely frightening and daunting to think that carriers purchasing access who receive calls from other IXCs without originating information are now obliged to search out originating detail about those calls beyond the point at which they receive it. In many cases the terminating IXC may not even know who to ask, let alone have the resources to devote to researching each such call. This requirement is an impossibility on its face.<sup>10</sup>

The current EES method was created after much deliberation by a Federal-State Joint Board and was based on a balancing of interests and hardships between the IXCs purchasing access and the ILECs selling access services. Within that context, a system was created that required IXCs to file PIU reports with the ILECs and to base those reports on a simple surrogate methodology which relies on substitution of the point of entry into the reporting IXC's network as the point of origin when the actual point is unknown. The *Declaratory Ruling* radically changes this balance by requiring IXCs now to research every call where originating call detail is missing to try and identify that state of origin. This is not the law today, and is not within the WCB's power to create without a rulemaking. It should be reversed by the Commission.

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<sup>10</sup> It is important to recognize that this proceeding does not present the question of the consequences of manipulating or deleting ANI information from the call stream. To the extent that this may or may not occur, the Commission will need to decide the proper response to such activity. This proceeding does not present that opportunity to the Commission.

## II.

### **THE COMMISSION SHOULD REVERSE THE *DECLARATORY RULING'S* ERRONEOUS RULING PERMITTING STATE PUCS TO RETROACTIVELY REVISE PIU CALCULATIONS**

The *Declaratory Ruling* declined to rule on Thrifty Call's request in connection with BellSouth's backbilling of access charges. In so doing, it permitted to stand a North Carolina Utilities Commission ruling awarding BellSouth damages for unpaid intrastate access charges based on a revision to the PIU retroactively for an extended period. This ruling was based on a misapplication of the Communications Act and the BellSouth tariff and must be reversed. If allowed to stand, the *Declaratory Ruling* abdicates federal authority over jurisdictional separations processes to the states.

BellSouth's interstate access tariff states that PIU's that are adjusted from the original carrier reports "shall be applied to the usage for the quarter the audit is completed, the usage for the quarter prior to the completion of the audit, and the usage for the two (2) quarters following the completion of the audit."<sup>11</sup> In the Thrifty Call case, there was no audit and the WCB declined to rule on retroactivity, simply stating that "it is within the North Carolina commission's jurisdiction to determine whether BellSouth provided sufficient evidence to prove its backbilling amount."<sup>12</sup> This statement is incorrect.

Any backbilling for intrastate access can only occur *after* a retroactive PIU adjustment. And PIU adjustment is solely a federal matter, as the Commission has often recognized.<sup>13</sup> Importantly, the relevant BellSouth interstate tariff provision refers to PIU adjustments, not to backbilling. It has been longstanding FCC policy to forbid retroactive

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<sup>11</sup> *BellSouth F.C.C. No. 1*, § 2.3.10(D)(1).

<sup>12</sup> *Declaratory Ruling*, ¶ 27.

<sup>13</sup> See, e.g., 47 U.S.C. § 410; *In the Matter of Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service*, 4 FCC Rcd 1966 (Feb. 27, 1989).



revisions to PIUs of more than a very limited timeframe. The federal tariff provision which permits backward-looking PIU revisions for a maximum of two quarters was the subject of much debate and discussion before it was allowed to take effect.<sup>14</sup> Again, this policy was based on the careful balancing of interests between access purchasing IXC's and access selling ILEC's in the jurisdictional separations process which is under *exclusive* FCC jurisdiction.<sup>15</sup>

Billing – and backbilling – can only occur after the PIU has been determined. And the PIU can be determined only pursuant to federal law and FCC tariffs. Therefore, any revision in access bills based on revised PIUs can only be accomplished for the period within which FCC policy and prescribed interstate tariffs permit retroactive PIU revision. Any inconsistent intrastate tariff – or PUC ruling – which permits a different PIU calculation has been preempted by the FCC in its Orders adopting the PIU methodology and in the ILEC implementing tariffs prescribed by the FCC. Therefore, it is wholly incorrect to state, as did the *Declaratory Ruling*, that backbilling is solely a state matter.

In view of the federal tariff limitation of two prior quarters for PIU revisions, ILEC's will be permitted double recovery for state adjustments made further in arrears. Any change in the state PUC billing *necessarily* brings a concomitant change in federal billing because the two are each separate portions of the same whole. As the state element goes up, the federal part comes down equally. Thus, by permitting the state PUC's to revise the PIU backward for four years, and allow backbilling accordingly, the *Declaratory Ruling* looks the other way while the ILEC's receive double recovery. The ruling should be reversed and a finding made that

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<sup>14</sup> See *In the Matter of BellSouth Telecommunications, Inc., Revisions to Tariff F.C.C. No. 1*, Transmittal Nos. 73 and 93 (Feb. 22, 1993).

<sup>15</sup> It should not be heard that this tariff provision limiting retroactive PIU revisions does not apply where there was no PIU audit. In fact, this provision is the *only* reference in the tariff to PIU revisions of any sort. If it does not apply, then no retroactive revision of PIU is permissible.

PIU revisions may only be made consistent with federal policy and their implementing federal tariffs.

### III. CONCLUSION

For the reasons stated above, the Commission should review and reverse these portions of the *Declaratory Ruling*.

Respectfully submitted,

CompTel/ASCENT

By Jonathan D. Lee

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December 13, 2004

## CERTIFICATE OF SERVICE

I, Nancy Lee Boudrot, hereby certify that copies of the foregoing "Application for Review of the CompTel/ASCENT Alliance" were served this 13<sup>th</sup> day of December, 2004, by U.S. mail, as follows:

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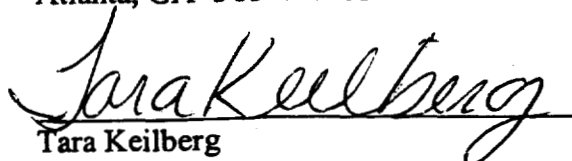
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February 17, 2005

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Office of Secretary

Attn: James Ball, Chief  
Policy Division, International Bureau

Re: *ALLTEL Corporation and Cingular Wireless LLC*,  
WT Docket No. 05-57 and DA 05-389  
File No. ITC-ASG-20041223-00509  
Copy of International Section 214 Assignment Application

Dear Ms. Dortch:

On behalf of Cingular Wireless LLC and ALLTEL Corporation, a copy of the above-referenced application in HTML format is hereby submitted. This filing is submitted as of right pursuant to Section 63.50 of the Commission's rules, 47 C.F.R. § 63.50.

The application as originally submitted was generated in Adobe Acrobat format by the International Bureau Filing System ("IBFS"). The Adobe Acrobat version of the application as generated by IBFS, however, did not include the answers to questions 14-20. A printout of the application as generated in HTML format, which includes questions 14-20, is attached, together with Attachment 1 of the application. All of the relevant questions pertaining to foreign carrier affiliations and non-dominant regulatory treatment of ALLTEL Corporation were substantively addressed in Attachment 1 of the application, and as such this filing is minor and non-substantive in nature.

No. of Copies rec'd 075  
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WILKINSON ) BARKER ) KNAUER ) LLP

Marlene H. Dortch, Secretary

February 17, 2005

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An original and five (5) copies of this filing are being submitted, and a copy is being submitted into the above-referenced docket via ECFS as well. Please contact the undersigned if there are questions concerning this filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert G. Morse", written in a cursive style.

Robert G. Morse

Attachment

cc: David Krech, IB  
Erin McGrath, WTB

**INTERNATIONAL SECTION 214 AUTHORIZATIONS  
FOR ASSIGNMENT OR  
TRANSFER OF CONTROL  
FCC 214 MAIN FORM FOR OFFICIAL USE ONLY**

FCC Use Only

**APPLICANT INFORMATION**

Enter a description of this application to identify it on the main menu:

Cingular-ALLTEL Assignment Application

**1. Legal Name of Applicant**

Name: ALLTEL Communications, Inc.

Phone Number: 501-905-8555

DBA

Name:

Fax Number: 501-905-6193

Street: One Allied Drive, B2F02-A

E-Mail:

City: Little Rock

State: AR

Country: USA

Zipcode: 72202 -2177

Attention:

**2. Name of Contact Representative (If other than applicant)**

Name: Glenn S. Rabin

Phone Number: 202-783-3976

Company: ALLTEL Corporation

Fax Number: 202-783-3982

Street: 601 Pennsylvania Ave.

E-Mail: glenn.s.rabin@alltel.com

Suite 720

City: Washington

State: DC

Country: USA

Zipcode: 20004-

Contact Title: Vice President - Federal Communications

Relationship: Legal Counsel

**CLASSIFICATION OF FILING****3. Choose the button next to the classification that best describes this filing. Choose only one.**☒ a. Assignment of Section 214 Authority

An Assignment of an authorization is a transaction in which the authorization, or a portion of it, is assigned from one entity to another. Following an assignment, the authorization will usually be held by an entity other than the one to which it was originally granted. (See Section 63.24(b).)

☐ b. Transfer of Control of Section 214 Authority

A Transfer of Control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. (See Section 63.24(c).)

☐ c. Notification of Pro Forma Assignment of Section 214 Authority ( No fee required )☐ d. Notification of Pro Forma Transfer of Control of Section 214 Authority ( No fee required )Date of Consummation: **Must be completed if you select c or d.****4. File Number(s) of Section 214 Authority(ies) for Which You Seek Consent to Assign or Transfer Control.**

File Number:	File Number:	File Number:	File Number:	File Number:	File Number:	File Number:	File Number:
ITC2142001103100547							

**5. Name of Section 214 Authorization Holder**

Name: Cingular Wireless LLC

Phone Number: 404-236-5543

DBA Name:		Fax Number: 404-236-5575
Street:	5565 Glenridge Connector Suite 1700	E-Mail:
City:	Atlanta	State: GA
Country:	USA	Zipcode: 30342 -
Attention:		

## 6. Name of Assignor / Transferor

Name:	Cingular Wireless LLC	Phone Number:	404-236-5543
Company:		Fax Number:	404-236-5575
Street:	5565 Glenridge Connector Suite 1700	E-Mail:	
City:	Atlanta	State:	GA
Country:	USA	Zipcode:	30342 -
Contact Title:	David Richards	Relationship:	Legal Counsel

## 7. Name of Assignee / Transferee

Name:	ALLTEL Communications, Inc.	Phone Number:	501-905-8555
DBA Name:		Fax Number:	501-905-6193
Street:	One Allied Drive, B2F02-A	E-Mail:	
City:	Little Rock	State:	AR
Country:	USA	Zipcode:	72202 -2177
Attention:	Glenn S. Rabin		

## 8a. Is a fee submitted with this application?

☒ If Yes, complete and attach FCC Form 159.

If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114).

☐ Governmental Entity ☐ Noncommercial educational licensee ☐ Notification of Pro Forma (No fee required.)  
☐ Other (please explain):

## 8b. You must file a separate application for each legal entity that holds one or more Section 214 authorizations to be assigned or transferred.

Fee Classification CUT - Section 214 Authority

## 9. Description (Summarize the nature of the application.)

Assignment of International Section 214 Authority from Cingular Wireless LLC to ALLTEL Communications, Inc. insofar as such assignment is required in conjunction with the sale of wireless licenses and assets resulting from the divestiture requirements of the Commission's Order approving the merger of Cingular and AT&T Wireless Services, Inc. See File No. ITC-214-20011031-00547. Cingular Wireless LLC will retain its international Section 214 authorization at issue after consummation.

## 10. In Attachment 1, please respond to paragraph (c) and (d) of Section 63.18 with respect to the assignor/transferor and the assignee/transferee. Label your response "Answer to Question 10".

11. Does any entity, directly or indirectly, own at least ten (10) percent of the equity of the assignee/transferee as determined by successive multiplication in the manner specified in the note to Section 63.18(h) of the rules? ☒ Yes ☐ No  
 If you answered "Yes" to this question, provide in Attachment 1, the name, address, citizenship, and principal businesses of each person or entity that directly or indirectly owns at least ten (10) percent of the equity of the assignee/transferee, and the percentage of equity owned by each of those persons or entities (to the nearest one percent). Label your response "Answer to Question 11."



12. Does the assignee/transferee have any interlocking directorates with a foreign carrier?

☐ Yes ☒ No

If you answered "Yes" to this question, identify each interlocking officer/director in Attachment 1. (See Section 63.09(g).) Provide the name and position/title of the individual or entity, the name of the foreign carrier, and the country in which the foreign carrier is authorized to operate. Label your response: "Answer to Question 12."

13. Provide in Attachment 1 a narrative of the means by which the proposed assignment or transfer of control will take place. In circumstances of a substantial assignment or transfer of control pursuant to Section 63.24(e), where the assignor seeks authority to assign only a portion of its U.S. international assets and/or customer base, please specify whether the assignor requests authority to continue to operate under any or all of its international Section 214 File Nos. after consummation; and, if so, please specify in Attachment 1 each File No. it seeks to retain in its own name. Label your response "Answer to Question 13."

Note: The assignor may retain any or all of its international Section 214 File Nos. In that case, the assignor will continue to hold the international section 214 authorizations that it specifies in response to this question. The ITC-ASG File No. that the Commission assigns to this application will, when granted, constitute Commission authorization of the proposed assignment of assets and /or customers from the assignor to the assignee. Unless Commission grant of the assignment application specifies otherwise, the assignee may provide the same services on the same routes as permitted under the assignor's Section 214 authorization(s), and the assignee may provide such service to any customers it may obtain in the ordinary course of business.

If this filing is not a notification of a *pro forma* assignment or *pro forma* transfer of control, please respond to Questions 14-20 below. (See Section 63.24(d).) Otherwise, you may proceed to Question 22 below.

14. Check "Yes" below if the assignee is a foreign carrier or if, upon consummation of the proposed assignment or transfer of control, the Section 214 holder would be affiliated with a foreign carrier. (See Section 63.18 (i).) The terms "foreign carrier" and "affiliated" are defined in Section 63.09 (d) & (e) of the rules respectively.

☐ Yes ☒ No

If you answered "Yes" to this question, please specify in Attachment 1 each foreign country in which the assignee is a foreign carrier or in which the Section 214 holder, upon consummation, would be affiliated with a foreign carrier. Label your response, "Answer to Question 14."

15. If this application is granted and the proposed assignment or transfer is consummated, would the Section 214 holder be authorized to provide service to any destination country for which any of the following statements is true?

☐ Yes ☒ No

- (1) The Section 214 holder is a foreign carrier in that country; or
- (2) The Section 214 holder controls a foreign carrier in that country; or
- (3) Any entity that owns more than 25 percent of the Section 214 holder, or that controls the Section 214 holder, controls a foreign carrier in that country.
- (4) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the Section 214 holder and are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

If you answered "Yes" to this question, please specify in Attachment 1 each foreign carrier and country for which any of the above statements would be true. Label your response, "Answer to Question 15."

16. If you answered "Yes" to question 14, do you request classification of the Section 214 holder as a "non-dominant" carrier, upon consummation of the proposed transaction, between the United States and *any or all* countries listed in response to Question 14? See Section 63.10 of the rules.

☐ Yes ☒ No

If you answered "Yes" to this question, you must provide information in Attachment 1 to demonstrate that the Section 214 holder would qualify for non-dominant classification under Section 63.10 of the rules on each U.S.-destination country route where it would be a foreign carrier, or would be affiliated with a foreign carrier and for which you request non-dominant classification. Label your response, "Answer to Question 16."

17. If you answered "Yes" to question 14 and you have not provided information in response to Question 16 to demonstrate that the Section 214 holder would qualify for non-dominant classification under Section 63.10 of the rules on each U.S.-destination route where it would be a foreign carrier, or be affiliated with a foreign carrier, check "Yes" below to certify that the assignee/transferee agrees to comply with the dominant carrier safeguards in Section 63.10 (c) & (e) of the rules in the provision of international service between the United States and any foreign country(ies) for which you have not provided the required information.

☐ Yes, I certify that I agree to comply with the dominant carrier safeguards in Section 63.10 (c) & (e) of the rules in my provision of international service between the United States and the following foreign country(ies):

☒ No, Does not apply.

18. If you answered "Yes" to question 15, and if you have not provided information in response to question 16 to demonstrate that the Section 214 holder would qualify for non-dominant classification under Section 63.10 of the rules in its provision of service to each of the countries identified in response to question 15, the Section 214 holder may not be eligible to provide international telecommunications service between the U.S. and each such country following consummation of the assignment or transfer. In order to determine whether the

public interest would be served by authorizing service on these U.S.-destination country routes, the assignee/transferee must provide information, in Attachment 1, to satisfy one of the showings specified in Section 63.18(k) of the rules. Label your response, "Answer to Question 18."

19. If the assignee, or the Section 214 holder that is the subject of this transfer of control application, is a provider of Commercial Mobile Radio Services, you need not answer this question.

If any of the Section 214 authorization(s) that would be assigned or transferred, authorize the Section 214 holder to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to a country listed in response to question 14, and unless you have provided information in response to question 16 to demonstrate that the Section 214 holder would qualify for non-dominant classification under Section 63.10(a)(3) of the rules for each country, check "Yes" below to certify that the assignee/transferee will file the quarterly traffic reports required by Section 43.61(c) of the rules; and/or state in Attachment 1 that the foreign carrier(s) for which the applicant has not made a showing under Section 63.10(c)(3) do(es) not collect settlement payments from U.S. international carriers. (See Section 63.18(l).)

☒ Yes, I certify that I agree to comply with the quarterly traffic reporting requirements set forth in section 43.61( c ) of the rules.

20. If the applicant desires streamlined processing pursuant to Section 63.12 of the rules, provide in Attachment 1 a statement of how the application qualifies for streamlined processing. (See Section 63.18(p).) Note that, if the application is being filed in connection with a sale of assets or reorganization of a carrier or its parent pursuant to the U.S. bankruptcy laws, the application may not be eligible for streamlined processing until final bankruptcy court approval of the proposed sale or reorganization.

Applicant certifies that its responses to questions 21 through 25 are true:

21. The assignee/transferee certifies that it has not agreed to accept special concessions directly or indirectly from a foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and will not enter into any such agreements in the future.

☒ Yes ☐ No

22. By signing this application, the undersigned certify either (1) that the authorization(s) will not be assigned or that control of the authorization(s) will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to the notification procedures for *pro forma* transactions under Section 63.24 of the rules. The assignee/transferee also acknowledges that the Commission must be notified by letter within 30 days of a consummation or of a decision not to consummate. (See Section 63.24(e)(4).)

☒ Yes ☐ No

23. If this filing is a notification of a *pro forma* assignment or transfer of control, the undersigned certify that the assignment or transfer of control was *pro forma* and that, together with all previous *pro forma* transactions, does not result in a change in the actual controlling party.

☐ Yes ☒ No

24. The undersigned certify that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.

☒ Yes ☐ No

25. The assignee/transferee certifies that neither it nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance. See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.

☒ Yes ☐ No

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT (U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).**

### CERTIFICATION

26. Printed Name of Assignor / Transferor Carol L. Tacker	29. Printed Name of Assignee / Transferee Glenn S. Rabin
27. Title (Office Held by Person Signing) VP-Asst. Gen. Counsel & Corporate Secretary	30. Title (Office Held by Person Signing) Vice President-Federal Communications Counsel
28. Signature (Enter the name of the person who will sign the paper version of this form for retention in their files) /s/ Carol L. Tacker	31. Signature (Enter the name of the person who will sign the paper version of this form for retention in their files) /s/ Glenn S. Rabin

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

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The public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD-PERF, Paperwork Reduction Project (3060-0686), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to [jboley@fcc.gov](mailto:jboley@fcc.gov). PLEASE DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

Remember - You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0686.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

## **ATTACHMENT 1**

### **Application for Assignment of International Section 214 Authority from Cingular Wireless LLC to ALLTEL Communications, Inc.**

#### **Answer to Question 10**

##### ***Assignor Contact Information***

David Richards  
Cingular Wireless LLC  
5565 Glenridge Connector Suite 1700  
Atlanta, GA 30342  
(404) 236-5543

##### ***Assignee Contact Information***

Glenn S. Rabin  
ALLTEL Communications, Inc.  
601 Pennsylvania Ave. Suite 720  
Washington, DC 20004  
(202) 783-3976

##### ***Prior International Section 214 Authorizations***

Assignor Cingular Wireless LLC and its numerous wireless subsidiaries hold a number of international Section 214 authorizations for global resale and facilities-based service. The authorization relevant for purposes of the instant application is File No. ITC-214-20011031-00547.

Assignee ALLTEL Communications, Inc. holds global resale authority pursuant to Section 63.18(e)(2) of the Commission's rules. File Nos. ITC-214-19960404-00138, ITC-T/C-19980610-00400.

#### **Answer to Question 11**

Pursuant to Section 63.18(h) of the Commission's rules, following is the relevant ownership information listing the entities holding a 10 percent and greater interest in Assignee ALLTEL Communications, Inc.

*Direct Ownership*

Name: ALLTEL Corporation ("ALLTEL")  
Address: One Allied Dr.  
Bldg. IV, F5S  
Little Rock, AR 72202  
Citizenship: Delaware (U.S.)  
Principal Business: Telecommunications and information services  
Percentage Held: 100% interest in ALLTEL Communications, Inc.

*Indirect Ownership*

ALLTEL is a publicly-traded corporation and no single shareholder holds 10% or more of ALLTEL's shares.

ALLTEL Communications, Inc. has no interlocking directorates with a foreign carrier.

**Answer to Question 13**

***Description of Transaction***

The instant application is submitted in conjunction with a separate Form 603 application filed by ALLTEL Corporation ("ALLTEL") and Cingular Wireless LLC ("Cingular") (collectively, the "Parties") requesting Commission consent to transfer control of ALLTEL Newco LLC ("Newco"), which will be the holder of certain wireless licenses in Connecticut, Georgia, Kansas, Kentucky, Mississippi, Oklahoma, and Texas and related system assets, from Cingular to ALLTEL. This transfer of control fulfills in part the government-ordered divestiture of certain commercial mobile radio service ("CMRS") properties as a condition of the approval of Cingular Wireless Corporation's merger with AT&T Wireless Services, Inc. ("AT&T Wireless"). The Commission determined that such divestiture "will serve the public interest by making spectrum available to strengthen an incumbent competitor or to allow new entry in these markets."<sup>1</sup>

The instant assignment application is limited in scope to those wireless properties in which the assets ALLTEL is purchasing includes subscriber contracts/accounts, which are the Oklahoma City and Grant, Oklahoma; Sherman-Denison and Jack, Texas; Owensboro and Fulton, Kentucky; Litchfield, Connecticut; and Yalobusha, Mississippi markets (the "Properties").<sup>2</sup> Consistent with International Bureau practice, the Parties seek Commission approval to assign global resale international Section 214 authority for the affected areas and subscribers from Cingular to ALLTEL Communications, Inc. ("ACI"), a wholly-owned

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<sup>1</sup> See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation et al.*, Memorandum Opinion and Order, FCC 04-255, ¶ 199 (rel. Oct. 26, 2004) ("*Cingular Merger Order*").

<sup>2</sup> Additional information concerning the affected geographic areas is detailed in the pending Form 603 application, which should appear in ULS shortly and in any event is included as an attachment hereto.

subsidiary of ALLTEL and the entity that will ultimately hold the Properties that are subject to the transaction.

### ***Public Interest Statement***

As described below, the instant application is subject to the FCC's streamlined application processing procedures, and the Commission established long ago that anticompetitive concerns are unlikely to arise when a carrier has no foreign carrier affiliates.<sup>3</sup> ALLTEL, through ACI, holds only a small share of the international services market as a pure reseller, and will acquire a limited number of customers as a result of the transaction. Thus, the transaction will have no discernible impact on the intensely competitive international telecommunications marketplace. Moreover, the assignment proposed herein will not result in any violation of the Act, the rules or any other applicable statutory provision. In addition, ALLTEL, through ACI, plans to continue providing international service to the affected customers on a resale basis.<sup>4</sup>

The assignment is related to the transfer of wireless assets to partially satisfy a condition of the *Cingular Merger Order* that the Commission imposed to protect the public interest. The Properties that ALLTEL is acquiring from Cingular do not overlap with ALLTEL's current wireless holdings. Therefore, the acquired Properties will complement ALLTEL's existing network. Acquisition of the Properties will allow ALLTEL to expand the footprint of its existing facilities-based network, and to become a new facilities-based wireless competitor in these markets and a stronger competitor in regional wireless markets. ALLTEL's ability to vigorously compete benefits consumers by promoting lower prices and the development of innovative new services. ALLTEL will utilize the Properties post-transaction to provide comprehensive telecommunications service packages to existing and new consumers that expect integrated bundles of services to meet their communications needs. The transaction will permit ALLTEL to take advantage of a number of operational efficiencies, thereby reducing marginal costs and generating savings for telecommunications customers.

Furthermore, grant of this assignment will allow ALLTEL to advance its long-standing commitment to, and expertise in, providing high quality, technologically advanced services to business customers living in rural and suburban areas. Upon consummation of the proposed transaction, ALLTEL will possess more resources and increased access to capital to ensure that advanced services and new offerings are delivered to all consumers, particularly those rural customers that might otherwise not rapidly receive such services.

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<sup>3</sup> See *Regulation of International Common Carrier Services*, 7 F.C.C.R. 7331, ¶ 10 (1992). In addition, the Commission has determined that transfer and assignment applications that demonstrate on their face that a transaction will yield affirmative public interest benefits and will neither violate the Communications Act of 1934, as amended (the "Act") or Commission's rules nor frustrate or undermine policies and enforcement of the Act, do not require extensive review and expenditures of considerable resources by the Commission particularly if no adverse competitive impact will result. See *Applications of Tele-Communications, Inc. and AT&T Corp.*, 14 F.C.C.R. 3160, 3170 (1999); *Ameritech-SBC Order*, 14 F.C.C.R. 14712, 14740-41 (1999).

<sup>4</sup> Following consummation of the proposed transaction, ALLTEL Communications, Inc. will notify Cingular's former customers that the ownership of their carrier has changed.

ALLTEL's acquisition of the Properties also will serve the public interest by allowing Cingular to quickly divest wireless interests as directed by the U.S. government.<sup>5</sup> Therefore, grant of this application will serve the public interest by allowing ALLTEL to become a stronger competitor in the wireless markets at issue.

***Treatment of Assignor's Authorization***

Pursuant to this application, Cingular seeks authority to assign only a portion of its U.S. international customer base, and will continue to provide service to customers in the affected markets. Assignor therefore requests authority to continue to operate under the international Section 214 authorization subject to the instant application – File No. ITC-214-20011031-00547.

**Answer to Question 20**

ALLTEL Communications, Inc. has no foreign carrier or dominant carrier affiliations. Therefore, this application qualifies for streamlined processing pursuant to Section 63.12 of the Commission's rules.<sup>6</sup> The Parties will not consummate the transaction until after the Commission approves the related Form 603 application seeking consent to transfer control of Newco from Cingular to ALLTEL.

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<sup>5</sup> See *Cingular Merger Order*, ¶¶ 191-200.

<sup>6</sup> See 47 C.F.R. §§ 63.12(a), (c), (d).